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The Kennedy-Hoover Fracas

There's a lot of acrid smoke being generated these days in the running battle between the former attorney general and his erstwhile subordinate, the director of the Federal Bureau of Investigation. So much so, in fact, that nearly everyone seems to have lost sight of the basic issue behind all the fuss and feathers.

The important question, it seems to us, is just how far our society can properly go to protect itself against suspected criminal activity. The Kennedy-Hoover dispute seems to be based on the assumption that someone was playing dirty pool: that every use of every electronic listening device is necessarily immoral and illegal. And that assumption is unwarranted.

The legality of the electronic bugging—even the admissibility of evidence so obtained—is still very much an open question. This week, for instance, the Supreme Court upheld the jury-tampering conviction of one of James Hoffa's lawyers, a conviction that depended primarily on evidence obtained by an informer who carried a hidden tape recorder during conversations with the lawyer. A reading of Supreme Court decisions would, in fact, indicate that where bugging involves physical trespass, it is illegal, and where there is no illegal entry there is no illegality.

The morality of electronic eavesdropping is a far more complex issue than the doctrinaire liberal would choose to examine. To the hard-core

advocates of individual rights, it is an invasion of privacy and is therefore improper. But is not, in fact, every activity on the part of police investigators an invasion of a suspected criminal's privacy? And if augmenting the ear's natural ability to hear is *per se* immoral, is it not equally so for a law enforcement officer to boost his eyesight while maintaining surveillance of a suspect? If the commission of crime is seen through binoculars, would it be either immoral or illegal for that crime to be reported and prosecuted on the basis of such evidence?

This is not to say that all snooping on the part of the police is automatically proper or legal or that a close rein should not be kept on all police practices, local and federal. But what is needed, it seems to us, is some careful, judicious policy-making in this shadowy area, by executive order, by clear-cut court decision or by congressional action—if necessary. Perhaps the Senate hearing called for by Senator Long can make a constructive contribution along these lines.

There is precious little chance, certainly, that anything constructive will result from the present unseemly race to disavow responsibility for past FBI practices. The danger is that this battle of the press releases may help produce a climate of thoughtlessness in which the law enforcement apparatus could lose a valuable and legitimate tool in the battle against crime.